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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.807 OF 2000

The State of Maharashtra ...Appellant.
(Through the Collector of Satara) (Ori.Opponent)

Vs.

Shri Vasant Madhav Gokhale
R/o. 57, Raviwar Peth,
Gite Building, Satara,
Dist. Satara. ...Respondent.
(Org.Plaintiff)

Smt. P.H.Kantharia, AGP for the State.

Mrs. A.A.Agarwal for the respondent.

CORAM : ANOOP V. MOHTA,J.

DATED : 10th October, 2007

JUDGMENT :-

1. The suit filed by the Plaintiff/Respondent was for- a decree of Rs.5,18,000/- against the appellant with 18% p.a. interest throughout.

2. The suit was decreed by Judgment and Order passed

by Joint Civil Judge, Senior Division, Satara dated 6th May, 2000.

3. On 16/01/1979 the tender was issued for construction of Bridge across Tilganga river at Kumthe on Koregaon Bhadale Road. On 02/04/1979, the tender acceptance letter from Executive Engineer, Satara. On 20/04/1979, the work order issued by Executive Engineer, No. G.117/4564 of dated 20/04/1979.

4. On 09/05/1979, a letter SAT/MAY/9AIF of 09/05/1979 to Deputy Engineer, Koregaon of the respondent saying line out of bridge work be given with all relevant drawing of the bridge work.

5. On 15/06/1979 and 12/07/1979 letters to Deputy Engineer, Koregaon for issue of cement and steel.

6. On 08/09/1979, telegram copy to Executive Engineer N.H.Division Kolhapur mentioning that "WORK OF BRIDGE, ACROSS TILGANGA RIVER AT KUMTHE STOPPED BY TANAJIRAO JAGDALE LAND OWNER/ MAKE EARLY ARRANGEMENT TO GIVE POSSESSION OF LAND- V.M.GOKHALE- CONTRACTOR.

7. on 24/09/1979, the respondent-plaintiff sent

registered notice to the Executive Engineer, Satara and all other concerned officers and submitted his grievance basically for extension of time without prejudice to the rights of claim to the compensation.

8. On 16/10/1979 letter No. PNA/OCT/16-A dated 16/10/1979 to Deputy Engineer, Satara Sub Division II, regarding Bridge work totally suspended from 04/09/1979 due to injunction issued by the Civil Judge, Senior Division, Satara under Civil Suit No. No. 225/1979 on 24/08/1979.

9. On 25/10/1979, letter from Deputy Engineer P.W. Sub Dn. II Satara vide his No.S/II/455 of 79 saying next date for hearing the Civil Suit No. 225/79 was fixed on 26/10/1979.

10. On 30/10/1979, letter No. S/II/487 of 1979 from Deputy Engineer P.W. Sub Div. No. II Satara saying as per Govt. orders the Bridge work of Tilganga River is transferred from this Sub Division to Koregaon Sub Division from 29/10/1979.

11. On 18/04/1980, register letter No.KO/IC/Tilganga/1301 from Deputy Engineer, Koregaon

dated 18/04/1980 saying that the injunction imposed by the Court of Law, Satara upon the construction of Tilganga bridge had been vacated with effect from 16/04/1980.

12. On 02/05/1980, the respondent by an another letter duly objected to the conditional extension of time upto 19/12/1980, as basic work order issued on 20/04/1980 for 12 months had expired on 19/04/1980 itself and further; requested for enhanced rates and if not possible to discharge from the contract/obligation.

13. On 16/05/1980, the appellant replied the same letter dated 02/05/1980; and thereby insisted to start and complete the work.

14. On 13/12/1980, the respondent addressed another letter to the appellant referring to all the events and pointed out that the respondent had started the work on specific understanding that the tender rates would be enhanced and requested to sanction enhanced rate as per the current C.S.R. otherwise requested to release from the contract.

15. As on 17/03/1983, the appellant refused to make the further payment in view of the earlier settlement, therefore, notice was sent by the respondent and claimed compensation accordingly.

16. On 02/07/1985 the respondent filed the present Special Civil Suit No. 72 of 1985 and claimed Rs.5,18,000/- along with interest @ 18% p.a. from the Appellant.

17. On 06/05/2000, by Judgment and Order dated 06/05/2000 the learned Joint Civil Judge, Senior Division, Satara decreed the Suit of the Respondent and directed the Appellant to pay Rs.5,18,000/- along with interest @ 18% p.a.

18. On 06/11/2000, being aggrieved the Appellant preferred the present First Appeal No. 807 of 2000 along with Application for Stay. This Hon’ble High Court admitted the said First Appeal on 06/11/2000 and has stayed the execution and operation of Judgment and order dated 06/05/2000.

19. The trial Court had framed the issues as under:-

1. Whether plaintiff proves that the Defendant is liable to pay the claims more fully described in Para 9(a) and 9(b) of the plaint?

1. Yes.

2. Whether defendant proves that suit is barred by estoppels as contended in para 3 of the Written Statement?

2. No.

3. Whether notice u/s. 80(1) of C.P.C. is legal and valid?

3. Yes.

4. Whether defendant can ask for Compensatory costs of Rs.5,00,000/-?

4. No.

5. Whether plaintiff is entitled to suit amount?

5. Yes.

6. What order as decree?

6. Suit is decreed.

20. The learned counsel appearing for the appellant has principally raised the following submissions:-

i. In view of the admitted fact that, plaintiff did not complete the work and at no time maintained progress of work at the required rate, even after extension of time

after stay was vacated by the Court, the plaintiff is not entitled to recover any amount of compensation/damages as claimed.

ii. The claim amount claimed by the plaintiff is not only exorbitant but imaginary and the trial Court has totally erred in granting the entire claim amount without appreciations of evidence, material and documents on record.

iii. The decree passed by the Trial Court be set aside and the decretal amount deposited by the Appellant be directed to refund.

iv. Thus from the contract conditions and correspondence stated above, it is submitted that Plaintiff/Respondent failed to prove breach of terms of contract on the part of the Appellant - State of Maharashtra and in fact, he has committed breach of terms of contract and therefore, he is not entitled for any amount of compensation/damages as claimed and granted by the Trial Court. Thus, the decree

passed by the Trial Court deserves to be quashed and set aside.

21. The respondents however, resisted the same and basically challenged the action of the appellant as under:-

a. Tender notice was issued and contract document were executed without securing the lands on both sides for the abutments and returns, in breach of the standing orders.

b. Approximate and partial line out was given for oversize foundations, and payment for extra work rejected wrongly.

c. Certified copies of contract documents and drawings were not supplied till the fag end of the contract period.

d. Did not comply wrongly the clause No.15 of the contract and wrongly failed to release the plaintiff.

e. The appellant did not communicate the stays.

f. The appellant wrongly held responsible to the respondents for the failure of completion of work in stipulated period.

g. The appellant/defendant did not supply the cement and steel as they had no stocks, but suppressed the truth to save themselves from the consequences.

h. Extended conditionally unilaterally the completion period without complying the proper clause of the contract when the respondent/plaintiff exercised his option.

i. Without setting the claims of the respondent/ plaintiff lawfully, attempted to record final measurements and unauthorizedly called for fresh tender.

j. The final measurements were not taken in May 1980, and failed to purchase the respondent’s/ plaintiff’s centring other material specially got fabricated for the

work.

22. The plaintiff-respondent has accordingly, claimed the amount as under:-

Sr.No.	Para No. of this plaint	Amount Rs.	Reference to the schedule
1.	4/2	1,49,000=00	"A" & "B"
2.	4/2	9,565=00	"C"
3.	5	62,969=00	"D"
4.	6/2	21,391=26	"E"
5.	8/A	501=52	-
6.	8/B	57,760=25	-
7.	8/C	3,489=00	-
8.	8/D	46,295=36	"F"
9.	8/E	1,679=00	-
	Total Rs.	3,52,650=39	

. And, plaintiff is also entitled to claim interest on the above amount that feel due to the plaintiff except on the amount at Sr. No. 8 in the above. The amount of interest within limitation works to, till 08/09/1984, Rs. 1,14,883=12 at the rate of 18 per cent per annum, which is allowed to and charged by the nationalized, commercial banks.

23. The plaintiffs-respondents have led the evidence of P.W.1 and proved the respective averments and he has filed various documents like correspondence of record of purchase of metal, sands, vouchers, advance receipts, sundry expenses, Khatavni registers etc.. The documents are exhibited by exhibit Nos. 51 to 54, 63, 64, 76, 76(a), 77, 77(a), 78, 79, 107, 108, 109 to 116 and 117 to 123, 124 to 149, 150 to 178, 179 to 205, 206 to 224, 225, 226 to 346, 363 to 374.

24. The defendant-appellant examined one witness namely Basappa an Executive Engineer who was not the Engineer working as Deputy Engineer in the village Koregaon from 1978 to 1983. Based on the record, he made the deposition.

25. The issue, therefore, in the present appeal are:-

1. Whether the Judgment and decree passed by the trial Court is within the framework of law and the record?

1. Partly only.

2. Whether the grant of interest at the rate of 18% p.a. in all stages, is fair and reasonable?

2. No. 9% p.a. for all stages.

3. What order?

3. As per modified and final order.

26. After considering the material placed on record including the reasoning given by the trial Court and after perusal of the evidence laid by the parties with supporting documents, I find that the following points are substantially support the Judgment apart from the

evidence as recorded in the present case. Those are:-

a) The respondent- original plaintiff did not receive the approved maps and drawings in time. The appellants' Officer handed over the copy of the drawings and plans to the respondents during the pendency of the status-quo.

b) The land for shed required to stock the material was not made available. The line out was partially given.

c) There was no cooperation from the appellants.

d) The order of injunction/ status-quo caused the work stopped for about 8 months because of the case put up by the private land owner. The respondent plaintiff, therefore, suffered losses. There was no timely information about the Court's order, because of extension of time, respondent also suffered losses due to price rise.

e) The cement was not provided by the appellant from time to time.

27. There is no much dispute about the statutory notice under Section 80(1) of the Code of Civil Procedure (for short,"CPC"). The trial Court after considering the material placed on record including various endorsement and remarks made by the plaintiffs-respondents on the various bills stated "accepted under the protest". The appellant failed to prove that the suit is barred by estoppel. The witness of the appellant also admitted in his cross-examination that the plaintiff accepted some of the bills under protest and some bills were simply accepted. In this back ground there is no question of theory of estoppels.

28. With reference to the schedule "A" with regard to overhead expenses required to be borne per day for the construction of bridge across the Tilganga river near Kumathe village at Koregaon, Bhadale Road at the rate of Rs.500/- per day as claimed firstly, by letter dated 24/09/1979 and later on in the plaint and further schedule "B" of claiming Rs.500/- per day as overhead expenses for 298 days i.e. 298 days x Rs.500

= Rs.1,49,000/- in the totality of the circumstances, cannot be said to be exorbitant and without any proof.

29. In so far as overhead part is concerned, the original appellant-plaintiff has claimed and the learned trial Court has considered the particulars of the day and night watchman, labour for mobilization, Centring carpenters and fitters, Mason, Water pump drivers, male and female collies for excavation and concretes, site supervision staff on monthly basis. (Clerk at the rate of Rs.400/- per month) and Supervisor at Rs.600/- per month (two in numbers). Equipments and hire charges of machinery, water pumps and motor cycles 2 and 1 in number respectively and hire charges of godown on monthly basis of Rs.90/- p.m. and office and sundry expenses Rs.80/-. Based upon per day rates and the number of labourers, the submission that all these schedule (A) and (B) and the respective averments made are denied and therefore, the averments and the documents as filed by the respondent plaintiffs are not sufficient to support the case. The respondents as noted above has placed on record and proved number of documents which includes the Muster Roll, receipts and return of the executants. It is true that the respondent plaintiff

had not examined the signatories of those receipts and vouchers.

30. After going through the evidence led by the plaintiff and the evidence led by the appellants officers, I am of the view that the evidence as led by the respondent-plaintiff cannot be said to be unacceptable. There is no contra evidence placed on record by the appellant. In view of the fact that admittedly the appellant had extended the contract up to the period 19/12/1980. Admittedly, there was a stay/injunction from 04/09/1979 to 19/04/1980 of the Civil Code for a period of 229 days. The injunction order as sought by the villagers definitely hampered and halted the further construction work which was admittedly aware to the respondent-plaintiff. The submission that the work was stopped on 25/06/1979 i.e. on prior to the grant of stay i.e. on 04/09/1979 and as therefore, not entitled for the compensation of 229 days at the rate of Rs.500/- per day is not correct. In a given case, the appellant respondent could have started their work, even though it was closed and stopped on 25/06/1979. The injunction order, therefore, just cannot be overlooked and denied the claim of the respondent plaintiff on

that ground. The further fact of rainy season from 25/06/1979 and as referred of heavy rains on 26/07/1979, the continuous work had stopped and the local opposition made it impracticable to stick the work schedule. In the facts and circumstance of the case, also supports the case of plaintiff-respondent.

31. Admittedly, stay order, was communicated in writing, till 24/10/1980, from 04/07/1980. The said letter was of 18/04/1980 which was received by the plaintiff on 22/04/1980. Therefore, there is substance in the submission that from the date of communication at least which was communicated in writing, the respondent is not entitled to claim any amount from 04/07/1980 to 24/10/1980 i.e. for 69 days. The appellant through his witness further established the fact that the plaintiff-respondent was informed by letter dated 19/04/1980 that the Court has vacated the stay. In view of this, as per schedule "B", respondent-plaintiff is entitled for expenses only for 229 days i.e. 229 days x Rs.500 per day = Rs.1,14,500/- The amount, therefore, in this regard needs to be modified accordingly.

32. With regard to schedule "C" in reference to the

material washed away due to floods on 10/09/1979 is also unacceptable. As per the respondent, there were heavy rains on 26/07/1979. The claim that the material being washed away due to floods on 10/09/1979 is therefore, impermissible. The same is also rejected. Apart from the fact, also in view of the clause 5 (vii) of exhibit 54 and clauses 3.2 and 5.7 dealing with the damages of floods or accident.

33. As regards schedule D-1 with regard to the details of work carried out by the plaintiff during the period from 09/05/1979 to 04/09/1979 as per the defendants measurement and of actual measurement, basic claim is of difference in costs. After adjusting the amount of Rs. 4,567/ during the first four months to the tune of Rs.14,569/- and so far as schedule D-2 is concerned for the work carried out during the period from 16/05/1980 to 19/12/1980, the appellant had paid Rs.39,823/-. As per the measurements, the difference of claim of respondents as per schedule D-1 and D-2 comes to Rs.62962/-.

34. There is no dispute that the respondent had executed work and based upon that the appellant had paid Rs.4,567/- during the first four months before

the status quo order. It also supports the fact that the respondent had established and engaged man power as stated and claimed in Schedule "A" under the heading of overhead expenses. The possibility of exact excavation made to complete the work is also just cannot be overlooked. There is no serious dispute about the work done by the respondent as mentioned in schedule "D-1 and D-2". The finding, therefore, as given with this regard needs no interference.

35. With regard to the schedule "E" showing details of purchase of centring material fabricated for construction of bridge, the learned Judge after considering the fact that the appellant did not dispute that the respondent got the centring material specifically fabricated. The submission that the respondent-plaintiff could have used it at any other places is no ground and or reason to discard the claim as raised. The contention about exact size and or over sizes i.e. M.S. Channels of 75mm x 100 mm are not manufactured by any firm. In any way, there is no specific defence to the fact that the respondent-plaintiff had manufactured the fabricated for construction of bridge materials i.e. centring

and shuttering material. The labour charges in this regard, therefore, is also need to be granted in favour of the appellant. The Deputy Engineer in his cross-examination admitted that the plates required for centring should be studied. The submission that such plates are available in the market and are not required to fabricate in their special course is also not correct. The claim on the circumstances also, therefore, cannot be said to be without material.

36. The claim as per schedule "F" is in regard to the details of interest debited by the bankers of the borrowed capital for the construction of the bridge. The appellant cannot be liable to make the payment with regard to the interest required to be paid by the plaintiff contractor. As alleged borrowed capital for construction of the bridge, there are no details available on record to suggest that such capital was borrowed only for this project. The respondent admittedly were doing other such construction work. There are no statements of account produced by the respondent-plaintiff in this regard. The refund of amount borrowed by the respondent and the filing of the suit against the respondent by the bank cannot be the ground that the State should pay the said interest

on the amount so claimed. The finding, therefore, that for such venture, the contractor is required to borrow the amount, cannot be extended in the present case for want of details and accounts. The grant of claim as mentioned in schedule "F" of the plaint is, therefore, liable to be rejected and set aside accordingly.

37. In so far as the wrong deduction as referred in para 8-A, the amount being small and finally is given in favour of the plaintiff no interference is necessary.

38. As referred in para 8-B about the wrongful inaction and omission on the part of defendants and not informing or communicating the status quo order passed by the Court and that resulted into loss of his machinery is remained stayed and ideal including his labour staff and material equipments. The respondent, therefore, submitted that he would have earned at least 12% of the net profit on the balance amount of contract value at Rs.462082/- which comes to 57760.25 paise is not permissible. It cannot be granted specially when considering the fact for power heads the court has granted him Rs.500/- per day till the

extended period as per schedule A and secondly the appellant had also extended time for eight months which respondent-original plaintiff agreed without any objection. Therefore, such claim as raised in schedule 8B cannot be granted. The fact also cannot be overlooked that there was delay also on the part of the respondent who was unable to complete the work though time was extended. The state needs to complete the work through the other agency. The appellant has also raised again claim in view of this, though it was rejected and not pressed in the appeal. The claim, therefore, as per para 8B, is also rejected.

39. In reference to para "8C" and "8E" bills of Rs.3,489/- and Rs.1,679/- respectively, as claimed and as granted by the trial Court, considering the involvement of the amount is maintained.

40. The total modified/ restricted amount of claim is as under:-

Sr.No.	Para No. of this plaint	Amount Rs.	Modified amount Rs.	Reference to the schedule

1.	4/2	1,49,000=00	1,14,500=00	"A" & "B"
2.	4/2	9,565=00	Not granted	"C"
3.	5	62,969=00	62,969=00	"D"
4.	6/2	21,391=26	21,391=26	"E"
5.	8/A	501=52	501=52	-
6.	8/B	57,760=25	Not granted	-
7.	8/C	3,489=00	3,489=00	-
8.	8/D	46,295=36	Not granted	"F"
9.	8/E	1,679=00	1,679=00	-
	Total Rs.	3,52,650=39	2,04,529=78	

41. The 18% p.a., rate of interest as claimed this in all Rs.3,52,650=39 ps, till 08/09/1984 of Rs.1,14,883=12 ps. is exorbitant. The learned counsel appearing for the State rightly submitted that in view of the various Judgments of the Apex Court the rate of interest on the determined amount should not be more than 9%. The Apex Court has recently in **Krishna Bhagya Jala Nigam Ltd. Vs. G. Harischandra Reddy & Anr. 2007 AIR SCW 527** has observed that :-

> . "Here also we may add that we do not wish to interfere with the Award except to say that after economic reforms in our country the interest regime has changed and the

> rates have substantially reduced and, therefore, we are of the view that the interest awarded by the Arbitrator at 18% for the pre-arbitration period, for the pendente lite period and future interest be reduced to 9%."

42. The rate of interest, therefore, is restricted to 9% p.a. instead of 18% p.a. as claimed and granted on the principal amount as arrived at. The interest at the rate of 9% p.a. is further granted from the date of filing of the suit till realization.

43. The amount deposited by the appellant is subject to an adjustment. The appellant is entitled to withdraw the amount if it is paid and or deposited in excess, after adjusting the decretal amount with interest as ordered in this judgment. The respondent (Original plaintiff) is entitled to the amount with 9% interest throughout as ordered. The amount, if any, withdrawn by the respondent shall be adjusted and balance be paid to the respondent accordingly.

44. Taking all this into account, the State Appeal is partly allowed. The decree is modified accordingly.

45. No costs.

(ANOOP V. MOHTA, J.)